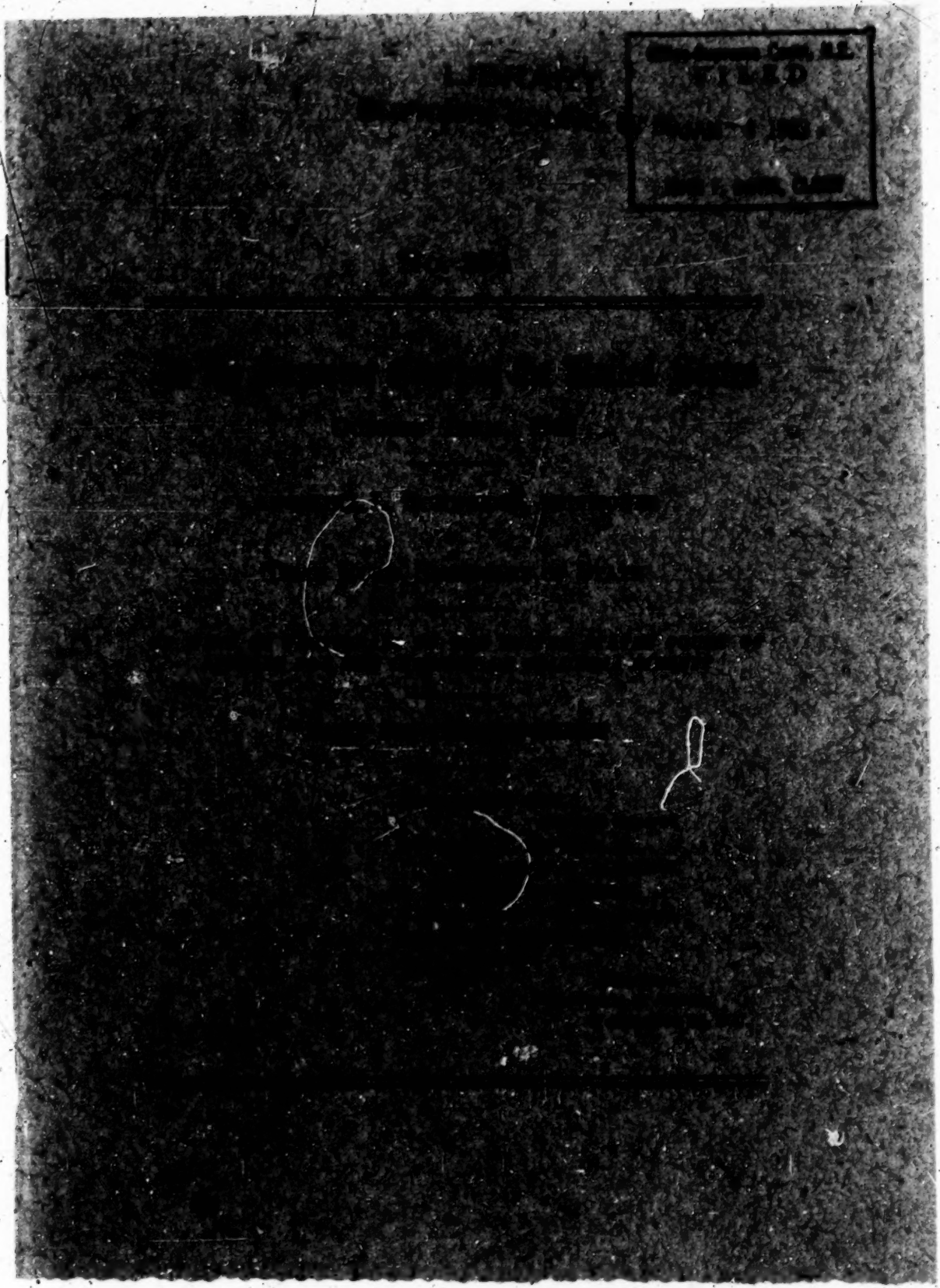

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 251

ANGELIKA L. SCHNEIDER, PETITIONER

v.

DEAN RUSK, SECRETARY OF STATE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT

OPINION BELOW

The *per curiam* opinion of the court of appeals (R. 29–30) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 1962 (R. 29–30). The petition for a writ of certiorari was filed on July 15, 1962, and was granted on October 15, 1962 (R. 30). The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 352(a)(1) of the Immigration and Nationality Act, providing for loss of United States nationality by a naturalized citizen who resides con-

tinuously for more than three years in the foreign state of which he was formerly a national, is a constitutional exercise of the powers of Congress.

STATUTE INVOLVED

Sections 101, 352, and 353 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 170, 269–270, 73 Stat. 274, 8 U.S.C. 1101, 1484–1485, provide in pertinent part as follows:

> SEC. 101. (a) (33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Residence shall be considered continuous for the purposes of sections 350 and 352 of title III where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.
>
> * * * * * *
>
> SEC. 352. (a) A person who has become a national by naturalization shall lose his nationality by—
>
> (1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 353 of this title, whether such residence commenced before or after the effective date of this Act;
>
> (2) having a continuous residence for five years in any foreign state or states, except as provided in sections 353 and 354 of this title, whether such residence commenced before or after the effective date of this Act.
>
> * * * * * *

SEC. 353. Section 352(a) shall have no application to a national who—

(1) has his residence abroad in the employment of the Government of the United States; or

(2) is receiving compensation from the Government of the United States and has his residence abroad on account of disability incurred in its service; or

(3) shall have had his residence in the United States for not less than twenty-five years subsequent to his naturalization and shall have attained the age of sixty years when the foreign residence is established; or

(4) had his residence abroad on October 14, 1940, and temporarily has his residence abroad, or who thereafter has gone or goes abroad and temporarily has his residence abroad, solely or principally to represent a bona fide American educational, scientific, philanthropic, commercial, financial, or business organization, having its principal office or place of business in the United States, or a bona fide religious organization having an office and representative in the United States, or an international agency of an official character in which the United States participates for which he receives a substantial compensation; or

(5) has his residence abroad and is prevented from returning to the United States exclusively (A) by his own ill health; or (B) by the ill health of his parent, spouse, or child who cannot be brought to the United States, whose condition requires his personal care and attendance: *Provided*, That in such case the person having his residence abroad shall, at

least every six months, register at the appropriate Foreign Service office and submit evidence satisfactory to the Secretary of State that his case continues to meet the requirements of this subparagraph; or (C) by reason of the death of his parent, spouse, or child: *Provided,* That in the case of the death of such parent, spouse, or child the person having his residence abroad shall return to the United States within six months after the death of such relative; or

(6) has his residence abroad for the purpose of pursuing a full course of study of a specialized character or attending full time an institution of learning of a grade above that of a preparatory school: *Provided,* That such residence does not exceed five years; or

(7) is the spouse or child of, or has a son or daughter who is, an American citizen, and who has his residence abroad for the purpose of being with his American citizen spouse, parent, or son or daughter who has his residence abroad for one of the objects or considerations specified in paragraphs (1), (5) or (6) of this section, or paragraph (2) of section 1486 of this title; or

(8) is the spouse or child of an American national by birth who while under the age twenty-one years had his residence in the United States for a period of [or] periods totaling ten years, and has his residence abroad for the purpose of being with said spouse or parent; or

(9) was born in the United States or one of its outlying possessions, who originally had American nationality and who, after having

lost such nationality through marriage to an alien, reacquired it; or

(10) has, by Act of Congress or by treaty, United States nationality solely by reason of former nationality and birth or residence in an area outside the continental United States: Provided, That subsections (b) and (c) of section 404 of the Nationality Act of 1940, as amended (8 U.S.C. 804 (b) and (c)), shall not be held to be or to have been applicable to persons defined in this paragraph.

STATEMENT

Petitioner was born of German parents on May 28, 1934, in Bavaria and was a German national at birth. She was brought to the United States in 1939 or 1940. Her mother was naturalized as a United States citizen, and petitioner acquired derivative American citizenship in December 1950.[1] She studied abroad from 1954 to 1956 and, after a brief return to this country, went to Germany in June 1956 to marry a German citizen, the marriage taking place in July 1956. Petitioner has since resided continuously in Germany, with the exception of a family visit to the United States of about six weeks' duration in 1957. She intends to continue to live in Germany and has "no definite intention to return to the United States to reside" (R. 21; see also R. 10). Her two sons, who were born in Germany in 1957 and 1958, acquired German citizenship by virtue of their father's na-

[1] While the record does not contain the information, the files of the Immigration and Nationality Service show that petitioner's mother was naturalized in 1947, that her father was never naturalized and that her mother died in 1947 and her father in 1950.

tionality and American citizenship by virtue of Section 301(a)(7) of the Immigration and Nationality Act of 1952[2] (R. 21). Petitioner has not reacquired German nationality although she could do so on an expedited basis if she wished because she is married to a German citizen.[3]

In 1959, the United States denied further extension of the passport petitioner had held since 1954. The State Department certified that petitioner had expatriated herself under Section 352(a)(1) of the Immigration and Nationality Act of 1952[4] by continuous residence for three years in the foreign state of which she was a national prior to naturalization as a United States citizen (R. 15–16, 21–22). This decision was affirmed by the Department's Board of Review on the Loss of Nationality in January 1960 (R. 23).[5]

In February 1960, petitioner filed suit in the United States District Court for the District of Columbia for an order (1) enjoining the Secretary of State from enforcing Section 352(a)(1), and (2) declaring petitioner a citizen of the United States (R. 1–5). Petitioner having moved for summary judgment and the Secretary having moved for judgment on the pleadings, the district court entered judgment grant-

[2] 66 Stat. 235, 8 U.S.C. 1401(a)(7).

[3] See Pet. Br. 38, n. 15. The applicable (West) German law is Art. II(1), Third Law Governing Questions of Citizenship, Aug. 19, 1957.

[4] 66 Stat. 269, 8 U.S.C. 1484(a)(1) (see p. 2, *supra*).

[5] Petitioner returned to the United States for a visit in 1960 after the State Department had determined that she had expatriated herself, traveling on papers indicating that she was a stateless person (Pet. Br. 43, n. 17).

ing the Secretary's motion (R. 28). The court of appeals affirmed, *per curiam*, citing *Lapides* v. *Clark*, 176 F. 2d 619 (C.A. D.C.), certiorari denied, 338 U.S. 860 (R. 29–30).

SUMMARY OF ARGUMENT

I

Prior decisions of this Court have established that Congress, in pursuance of its powers to enact legislation, may attach the loss of American nationality to a voluntary act on the part of the citizen, where such action bears a reasonable relationship to the legitimate exercise of the power. In providing that three years' residence by a naturalized citizen in the country of his origin should result in expatriation, Congress was primarily invoking its power over foreign affairs. It was responding to a long history of diplomatic experience in which citizens returning to their land of origin would be the subject of various demands by that country (such as for military service) and would then seek this country's protection. The giving of protection in these circumstances invariably created friction between the two countries, and failing to give it was considered embarrassing to this country in the conduct of its foreign affairs.

Various means were sought for dealing with this problem. During some phases of our history, diplomatic protection was simply denied naturalized citizens returning to the country of their origin. Later this country sought to conclude naturalization treaties with other countries, under which each would recognize the other country's naturalization as conclusive;

however, a number of important countries refused to enter into such treaties. Later, the rights of citizenship were administratively granted or denied to naturalized persons residing in the country of their origin, depending upon the circumstances of each case. In 1907, Congress enacted a provision whereby a naturalized citizen residing for two years in the country of his origin would be presumed to have lost his citizenship, but this statute was found to be unsatisfactory in operation.

After detailed study, a cabinet committee in 1938 recommended the enactment of the present provision. The State Department had found that the problem of naturalized citizens residing in the country of their origin had become quite burdensome and embarrassing to this country's foreign relations. It rejected methods of dealing with the problem other than expatriation, such as denial of protection, on the ground that they had proved unworkable. After careful consideration and extensive hearings, Congress enacted the recommended provision in the Nationality Act of 1940. It was retained as Section 352(a)(1) of the Immigration and Nationality Act of 1952.

There was a reasonable connection between the regulation of foreign relations and the attachment of expatriation to protracted residence by a naturalized citizen in the country of his origin. Without question, the termination of the individual's citizenship would terminate the possibility that his foreign residence could cause the types of problems with which the State Department and Congress were concerned. Moreover, termination of these persons' citizenship

would also assist in the control of another problem with which Congress was concerned in 1940—dual nationality. Other methods for attacking the basic problem having been tried and found wanting, it was reasonable for Congress to conclude that expatriation was the only practical alternative available.

The classification to which Congress made this provision applicable—all naturalized citizens—was not larger than reasonably necessary. Nothing in this country's diplomatic history had suggested any smaller class. Moreover, Congress did make a conscientious effort to limit the reach of the provision by providing numerous exceptions excluding from its coverage those groups (in terms of age, employment, physical disability, etc.) who experience had shown were least likely to be the cause of international problems. Finally, Congress was not required to limit the application of the statute to those whose residence abroad actually caused international problems; *ad hoc* treatment is not necessary in relation to such a general problem as the conduct of international affairs.

This provision can also be sustained as an exercise of the power of Congress to regulate United States citizenship. It is apparent from its legislative history that both Congress and those on whom it relied regarded a naturalized citizen's returning to reside permanently in the country of his origin as importing not only a lack of allegiance to this country but the reestablishment of a relationship with another country that is inconsistent with American citizenship. This was by no means an unreasonable view.

II

It was not an unreasonable discrimination for Congress to make Section 352(a)(1) applicable only to naturalized citizens. In many cases this Court has sustained differentiations of treatment among different classes of persons upon a showing that the classification was reasonably devised to meet a demonstrated need. Indeed, the Court has recognized the validity of distinctions between different classes of citizens on the basis of foreign residence, and there are a number of such distinctions written into the law of this country. Drawing lines between naturalized and natural-born citizens in relation to foreign residence not only has a basis in well over 100 years of this country's diplomatic practice, but is well established in the practice of other Nations.

The diplomatic experience of this country makes it clear that the classification adopted by Congress was not unreasonable or arbitrary. That history demonstrates that it is the fact that a person is a naturalized citizen (and hence, by hypothesis, was born in another country and had possessed or still possessed another nationality) that makes him a potential source of foreign relations problems for this country. That being so, Congress was not bound to make the statute applicable to others having a lesser potentiality for creating such problems. It is noteworthy, in this connection, that Congress has attached various disabilities in other instances of foreign residence by American citizens in proportion to their problem-creating potential.

There is nothing "invidious" about the distinction that Congress has drawn here. It simply recognizes the facts of diplomatic experience—that naturalized citizens who return to reside permanently in the country of their origin are very likely to cause this country serious international problems. The reasonableness of the classification adopted by Congress is further demonstrated by the fact that expatriation of such individuals works far less of a hardship upon them than would a provision expatriating natural-born citizens who reside abroad. The connections that naturalized citizens have with their country of origin make it much easier for them to become reassimilated into the life of that country.

III

There is no basis whatever for a contention that Section 352(a)(1) is a "penal" provision which brings into play the Eighth Amendment's prohibition against cruel and unusual punishment. It is clear from the legislative history of the statute that its enactment was motivated primarily by a purpose to regulate the foreign affairs of this country. There is nothing in that history or on the face of the statute to suggest that there was any penal intent whatever in connection with its passage.

ARGUMENT

Petitioner, a native and former national of Germany who subsequently became a naturalized citizen of this country, has expatriated herself under the terms of Section 352(a)(1) of the Immigration and

Nationality Act of 1952, 66 Stat. 269, 8 U.S.C. 1484 (a)(1), which provides:

> (a) A person who has become a national by naturalization shall lose his nationality by—
>
> (1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, * * *.

The case is here on petitioner's challenge to the constitutional validity of this Act of Congress.

Section 351(a)(1) is, in our view, clearly constitutional. It was enacted, as an exercise of Congress's undoubted power to regulate the foreign affairs of this country, in response to a long history of international problems generated by the residence of naturalized citizens in the country of their origin; the congressional judgment that expatriation was the only effective way of dealing with these problems was a rational one. Moreover, since reassumption by a naturalized citizen of residence in the country of his former nationality may reasonably be viewed as importing some transfer of allegiance to that country, this statute is also sustainable as an exercise of Congress's power over United States citizenship. The statute's differentiation between naturalized and natural-born citizens does not unjustifiably discriminate against the former in violation of the Fifth Amendment, for the distinction is a rational one, firmly rooted in diplomatic history, the traditional practice

* Section 353 of the Act, 66 Stat. 270, as amended by 73 Stat. 274, 8 U.S.C. 1485, provides a number of exceptions to the application of Section 352(a)(1) (see pp. 3–5, *supra*); however, petitioner qualifies under none.

of this and many other countries and, indeed, the decisions of this Court. Finally, there is no basis whatever for considering the statute as imposing punishment and therefore as violating the Eighth Amendment.

I. CONGRESS HAS POWER TO MAKE PROLONGED RESIDENCE BY A NATURALIZED CITIZEN IN THE COUNTRY OF HIS ORIGIN AN EXPATRIATING ACT

The power of Congress to enact expatriation statutes has been firmly established by the decisions of this Court. In *Mackenzie* v. *Hare*, 239 U.S. 299, the Court sustained a statute suspending during coverture the citizenship of an American woman who married a foreigner. In *Savorgnan* v. *United States*, 338 U.S. 491, the Court upheld a statute providing that the taking of an oath of allegiance to a foreign sovereign would result in the loss of citizenship. And in *Perez* v. *Brownell*, 356 U.S. 44, the Court held that it was within the constitutional power of Congress to make voting in a foreign election an act of expatriation. The power of Congress to enact the statute involved in this case—Section 352(a)(1) of the Immigration and Nationality Act of 1952, providing for the expatriation of naturalized citizens who reside in the country of their origin for three or more years—has not previously been before this Court or any other appellate court. However, the Court of Appeals for the District of Columbia Circuit sustained the validity of a companion provision (Section 352(a)(2), which provides for the expatriation of naturalized citizens who reside in *any* foreign country for more than *five*

years) in *Lapides* v. *Clark*, 176 F. 2d 619, certiorari denied, 338 U.S. 860. There the court unanimously upheld the power of Congress to expatriate on grounds of foreign residence.[1]

The teaching of these cases is that Congress, in pursuance of a granted or implied power to enact legislation, may attach the loss of American nationality to a voluntary act on the part of the citizen, where such action bears a reasonable relationship to the legitimate exercise of the power. To say that the citizen's act must be "voluntary" is not to say that, by having engaged in it, the citizen must have intended or desired to expatriate himself. See *Perez* v. *Brownell*, *supra*, 356 U.S. at 61. Quite the contrary: the petitioner in the *Mackenzie* case "had not intended to give up her American citizenship" when she committed the expatriating act (*Savorgnan* v. *United States*, *supra*, 338 U.S. at 501); the petitioner in the *Savorgnan* case "had no intention of endangering her American citizenship or of renouncing her allegiance to the United States" (338 U.S. at 495). Thus it is wholly irrelevant that petitioner's loss of citizenship may be "contrary to her intentions, her feelings and her political allegiance" (Pet. Br. 14)). There is no question but that she engaged in conduct—protracted residence in the country of her birth and former nationality—to which Congress has attached the conse-

[1] Judge Edgerton, while dissenting on the ground that the statute was unconstitutionally discriminatory (a ground which we discuss at pp. 44–54, *infra*), agreed with the majority of the court that "Congress may expatriate citizens on reasonable grounds. No doubt these may include five years residence abroad" (176 F. 2d at 623).

quence of expatriation, and there is no question but that she engaged in that conduct of her own free will and without any sort of compulsion.

Accordingly, the only questions remaining on the issue of whether Congress had the power to attach loss of citizenship to protracted residence by naturalized citizens in the country of their origin are (1) whether Congress was acting under one of its granted or implied powers, and (2) whether there is a reasonable relationship between expatriation and one of the permissible objectives of the exercise of that power. We submit that Congress was acting under its comprehensive powers to regulate the foreign affairs of the United States and to regulate citizenship in the United States. Furthermore, we believe that there is a rational nexus between the permissible objectives of the exercise of those powers and the imposition of loss of citizenship.

A. SECTION 352(a)(1) IS A VALID EXERCISE OF CONGRESS'S POWER TO REGULATE THE FOREIGN RELATIONS OF THE UNITED STATES

In each of the cases in which this Court has sustained an expatriation statute, it has concluded that Congress was acting under its settled power to regulate the relations of this country with other nations.[8] *Mackenzie* v. *Hare*, 239 U.S. 299, 311–312; *Savorgnan* v. *United States*, 338 U.S. 491, 500 and n. 17; *Perez* v. *Brownell*, 356 U.S. 44, 57–60. In *Lapides* v. *Clark*, 176 F. 2d 619 (C.A. D.C.), certiorari denied, 338 U.S. 860, a companion statute to the one involved in this

[8] The nature of that power is discussed at length in *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 314–322.

case* was sustained as a valid exercise of the foreign affairs power of Congress (176 F. 2d at 621). Similarly, Section 352(a)(1) of the 1952 Act, under which petitioner was held to have expatriated herself for residing in the country of her origin for over three years, was within the constitutional power of Congress to regulate the foreign relations of the United States.

An examination of the diplomatic background of this provision, which we set forth in the following pages, makes clear the international relations problem that gave rise to it. And its legislative history, which we also set forth, makes it equally clear that, in attempting to meet this problem, Congress was primarily invoking its power over foreign affairs. Finally, both the diplomatic background and the legislative history of Section 352(a)(1) plainly establish the rationality of Congress's conclusion that, in order to solve the foreign relations problem confronting it, resort to the process of expatriation was reasonably necessary.

1. *The diplomatic background and legislative history of Section 352(a)(1)*

The return of naturalized citizens to reside at length in the country of their origin has long been a serious source of embarrassment and conflict in the foreign relations of the United States. The diplomatic history of this country is replete with instances in which the original country conscripted the returned native into its military service, charged him with a political

* See pp. 13–14, *supra*.

offense or made other demands upon him on the basis of his former connection; the native, in turn, sought the assistance of the United States, usually in the form of diplomatic protection, but sometimes in the form of other services. The inevitable result was either friction between the two countries or the embarrassment of inaction. See, *e.g.*, 3 Moore, *Digest of International Law* (1906), pp. 562–745, 735–757, 766–771.

During the middle part of the Nineteenth Century, the response of the United States to these demands varied from time to time, depending, no doubt, upon the current state of international relations, the magnitude of the problem at any given time and the policies of the administration in power. At times the naturalized citizen who returned to the country of his origin would simply be denied protection or any assurance of protection. *E.g.*, Wheaton to Knoche, July 24, 1840, S. Exec. Doc. No. 38, 36th Cong., 1st Sess., p. 6; Fish to Mintz, Feb. 1, 1870, 3 Moore, *supra*, at p. 582. Such refusals assumed that this country had no right to interfere with another country's enforcement of its claims against persons who, according to its laws, still owed it allegiance. *E.g.*, Marcy to Daniel, Nov. 10, 1855, 3 *id.* at pp. 569–570.

On the other hand, the refusal to grant protection and other such services to American citizens was considered embarrassing to the dignity of a Nation committed to the defense of the rights of its citizens. *E.g.*, Seward to Wright, Dec. 2, 1865, 3 Dipl. Corr. 1865, pp. 68–69. When the United States did intervene on behalf of a naturalized citizen who had returned to the country of his origin, it was often flatly

rebuffed. *E.g.*, Marcy to Bicknell, July 6, 1853, 3 Moore, *supra*, at p. 569. In other instances it was successful in securing relief for the naturalized citizen, but it was acutely conscious of the fact that such successes were at the expense of its good relations with the country in question, *e.g.*, S. Exec. Doc. No. 38, *supra*, at pp. 145–146, and it often attempted to discourage naturalized citizens from putting the United States in conflict with their former homeland. *E.g.*, Buchanan to Huesman, March 10, 1847, 3 Moore, *supra*, at p. 566.

Shortly after the Civil War, this country attempted a new approach to the problem. In 1868, Bancroft, the American Minister to the North German Confederation, negotiated a naturalization treaty with that State, which provided that each country would recognize the naturalization of its own natives by the other country; it provided, however, that "[i]f a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. * * * The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country." 15 Stat. 615, 616–617. Similar treaties, known as the "Bancroft treaties," were concluded with a number of other countries from then on and well into the Twentieth Century.[10] However, many

[10] *E.g.*, 17 Stat. 941 (Denmark), 37 Stat. 1655 (convention with a number of Latin American countries). The United States now has naturalization treaties or conventions with the following 20 countries: Albania, Argentina, Belgium, Bulgaria, Chile, Colombia, Costa Rica, Czechoslovakia, Denmark, Ecua-

countries, including a number of large and important ones, refused to enter into such treaties. *E.g.*, 3 Moore, *supra*, at pp. 604–607 (Greece), 609 (Italy), 622 (Russia).

The basic problem persisted in relation to the many countries with which the United States did not have naturalization treaties; moreover, the treaties themselves required administrative construction. Accordingly, in the latter part of the Nineteenth Century, the State Department developed standards for determining when naturalized citizens who returned to the country of their origin would be considered as having "expatriated" themselves (a term that tended to imply loss of the right to such incidents of citizenship as was within the Department's power to grant or deny, such as passports and protection; see 3 Moore, *supra*, at p. 711).[11] Among the considerations that were sometimes taken into account in addition to resumption of native residence were lack of manifestation of intention to return (*e.g.*, Rives to Proios, Oct. 25, 1888, 2 For. Rel. 1888, p. 1620), failure to

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dor, El Salvador, Haiti, Honduras, Nicaragua, Norway, Panama, Peru, Portugal, Sweden, and Uruguay. With respect to most of them, it is provided that return of the naturalized citizen to the country of his origin not only will result in the loss of his naturalized citizenship but will also effect his reacquisition of his original citizenship.

[11] During this period, some natural-born citizens were also considered to have "expatriated" themselves, but they had to commit considerably more serious acts than did naturalized citizens in order for this consequence to follow. *E.g.*, 14 Ops. Att'y Gen. 295, 298–299; Fish to Grant, Aug. 25, 1873, 2 For. Rel. 1873, p. 1191; see also Tsiang, *The Question of Expatriation in America Prior to 1907* (1942), p. 107; *Perez* v. *Brownell*, 356 U.S. 44, 49.

pay any taxes to the United States (*e.g.*, Fish to MacVeagh, For. Rel. 1871, p. 887), lack of ownership of property in the United States (Frelinghuysen to Lowell, Feb. 27, 1884, For. Rel. 1884, p. 216), and "settl[ing] himself in business" in his native land (Porter to Meyer, June 30, 1887, 3 Moore, *supra*, at p. 769). The fact that the individual had not engaged in any political activities in his former country was not necessarily thought to weigh against expatriation (*e.g.*, Porter to Curry, Jan. 4, 1886, *id.* at pp. 768–769). On the basis of such determinations as these, naturalized citizens were denied protection (*e.g.*, Davis to Barnett, Aug. 20, 1884, *id.* at p. 739), refused passports (*e.g.*, Rives to Proios, *supra*), and denied the right to have the United States press financial claims on their behalf (*e.g.*, Frelinghuysen to Lowell, *supra*).

While "[n]o one seems to have questioned the necessity of having the State Department, in its conduct of the foreign relations of the Nation, pass on the validity of claims to American citizenship and to such of its incidents as the right to diplomatic protection," *Perez* v. *Brownell*, 356 U.S. 44, 49, it was widely regarded as unsatisfactory that these determinations should depend on a scattering of treaties and ungoverned executive discretion (see H. Doc. No. 326, 59th Cong., 2d Sess., pp. 13, 26). As early as 1863, President Lincoln, troubled by the "altercations and great prejudices" that had resulted from the return of naturalized citizens to their country of origin during the Civil War, suggested to Congress that "[i]t might be advisable to fix a limit beyond which no citizen of the United States residing abroad may claim the

interposition of his Government." 6 *Messages & Papers of the Presidents* (Richardson ed. 1897), p. 181. President Grant urged Congress to adopt legislation defining "what acts or formalities shall work expatriation or when a citizen shall be deemed to have renounced or to have lost his citizenship" (7 *id.* at p. 291); he emphasized the need for resolving problems of foreign residence, especially of naturalized citizens (7 *id.* at pp. 291–292, 405–406).

One small step in the direction of solving this problem was taken by Congress in passing the Naturalization Act of 1906, 34 Stat. 596, 601, which provided that the naturalization of a person who established permanent residence in a foreign country within five years after his naturalization should be deemed presumptively fraudulent and subject to revocation.[12] During the consideration of this legislation, Congress called for a thorough examination into the problems relating to American citizenship, expatriation and protection (see *Perez* v. *Brownell, supra,* 356 U.S. at 49–50). Accordingly, the Secretary of State, Elihu Root, appointed several high officials of the State Department to a Citizenship Board whose assignment was to consider and report on these matters (see H. Doc. No. 326 *supra,* at pp. 1–2).

The Board submitted an extensive report late in 1906 (H. Doc. No. 326, *supra*). It noted that "the class of Americans who separate themselves from the United States and live within the jurisdiction of for-

[12] This provision is now contained in Section 340(d) of the Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U.S.C. 1451(d). Its constitutionality was sustained in *Luria* v. *United States*, 231 U.S. 9.

eign countries is becoming larger every year, and the question of their protection causes increasing embarrassment to this Government in its relations with foreign powers"; it went on to observe that the problem was becoming particularly acute with respect to naturalized citizens, for "[n]aturalized citizens are more apt to go abroad than native citizens. Having already changed their domicile, they are more apt to change it again" (H. Doc. No. 326, *supra,* at p. 25). The Board noted that persons residing abroad with no intention to return had been denied diplomatic protection. However, it concluded that this was not a satisfactory mode of dealing with the problem: the transitory character of a denial of protection permits the unseemly spectacle in which "one official may grant what another has refused"; moreover, mere denial of protection leaves too much uncertainty with respect to the status of a citizen (*id.* at 26).

The Board recommended (*inter alia*) the enactment of a provision whereby citizens "may be assumed" to have expatriated themselves (1) by obtaining naturalization in a foreign state, (2) by engaging in the service of a foreign government where the taking of an oath of allegiance is involved, and (3) by becoming domiciled in a foreign state, such domicile to be rebuttably presumed from residence in a foreign state for five years without intent to return to the United States (*id.* at p. 23).[12] On the basis of these recommendations, Congress provided, in Section 2 of the Nationality Act of 1907, 34 Stat.

[12] The Board also recommended the renewal of efforts to obtain naturalization treaties (H. Doc. No. 326, *supra*, at pp. 13–14).

1228, that persons naturalized in a foreign state or taking an oath of allegiance in a foreign state should "be deemed to have expatriated" themselves, and that

> When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen * * *.

The presumption was made rebuttable. In explaining the purpose of this provision, the House committee stated (H. Rep. No. 6431, 59th Cong., 2d Sess., p. 2):

> Perhaps the most important provision of the bill is desired by the State Department to guard against complications in which this country has often been involved. * * * Many foreigners come here, become naturalized, and then return to their own countries or migrate to other parts of the world, without any intention of returning to this country. * * *
>
> * * * [S]uch a provision as this would be a great assistance to the Department of State, would avoid possibilities of international complications, and will prevent those who are not entitled to its protection from dishonestly hiding under the American flag.

For the administration of the State Department's responsibilities under this Act, Secretary Root promptly issued detailed instructions. They provided that the presumption of the loss of naturalized citizenship by reason of protracted residence in a foreign state might be overcome by the presentation of satisfactory evidence that the individual intended eventually to return to the United States to reside

permanently and that his residence abroad (1) is solely as a representative of America trade or commerce, (2) is in good faith for reasons of health or education, or (3) results from unforeseen and controlling exigencies preventing his return (Instructions of April 19, 1907, 1 For. Rel. 1907, p. 4). These standards were later expanded to cover other circumstances (see Nationality Laws of the United States, 1938, part 1, House Committee Print, 76th Cong., 1st Sess., pp. 69–70), and formed the basis for the many exceptions to the provision involved in this case (see pp. 36–37, *infra*).

However, the presumption written into the 1907 Act proved troublesome. An Attorney General described it in 1928 as "so loosely drawn that its operation and effect have been in doubt ever since its passage" and urged the need for "clarifying legislation" (35 Ops. Att'y Gen. 399, 404). A committee consisting of the Secretary of State, the Attorney General and the Secretary of Labor, appointed by President Roosevelt in 1933 to review the nationality laws of the country, concluded that, while the foreign residence presumption for naturalized citizens

> has been of much practical use * * *, it has been found to a considerable extent to be insufficient and unsatisfactory, since, as construed by the courts, the presumption of loss of citizenship arising under its terms never becomes final, regardless of the length and cause of the foreign residence.

(Nationality Laws of the United States, part 1, *supra*, at p. 70). Moreover, the committee observed, the

courts had construed the presumption as relating "to loss of the right to diplomatic protection as a citizen, rather than loss of citizenship itself" (*ibid.*), so that the purposes of the 1907 legislation had largely been frustrated.

The cabinet committee (whose report and draft nationality code were the culmination of a five-year study by specialists) went on to emphasize the character and scope of the problem (*ibid.*):

> The problem presented by naturalized citizens of the United States residing, for insufficient reasons, in the foreign states in which they were born or of which they were formerly nationals, of whom there are thousands at the present day, has been a cause of difficulty and embarrassment to the Government of the United States in its efforts to extend protection to other naturalized citizens in meritorious cases. * * *

To the same effect: "The number of these cases is very large, and they are a constant source of irritation" (*id.* at p. 71). Accordingly, the committee recommended the enactment of a provision that a naturalized citizen (unless he came within specified exceptions) should lose his citizenship by "[r]esiding continuously for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated" (*id.* at pp. 69, 76)."

"The committee also recommended provision for the expatriation of a naturalized citizen who resides for two years in his country of origin if he thereby acquires its nationality by

In its letter transmitting its report to the President, the cabinet committee stated (*id.* at p. vii):

> Important reasons for terminating American nationality in cases of persons who reside in foreign countries and have to all intents and purposes abandoned the United States lie in the fact that it will prevent them from transmitting American nationality to their foreign-born children having little or no connection with the United States, and embroiling this Government in controversies which they may have with the governments of the foreign countries in which they reside. * * *

It went on to note that "[t]he mere presumption" provided for in the 1907 Act "has proven inadequate" (*ibid.*). In explaining why expatriation rather than denial of protection was recommended, the committee said, "In general the right to protection should be coexistent with citizenship, and a law under which persons residing abroad are denied the protection of this Government, although they remain citizens of the United States and transmit citizenship to children born abroad, is deemed inconsistent and unreasonable" (*ibid.*). The committee also stated (*ibid.*):

> None of the provisions in the [draft] Code concerning loss of American nationality, such as those applicable to * * * persons, who, after obtaining American nationality through natu-

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operation of law (Nationality Laws of the United States, *supra*, at p. 69).

The committee expressed the hope that enactment of the three-year provision might induce more countries to enter into naturalization treaties with the United States (*id.* at p. 71). See pp. 18–19, *supra*.

> ralization, establish a residence abroad, is designed to be punitive or interfere with freedom of action. * * *

The President transmitted the report and draft code to Congress in June 1938.

Extensive hearings were held on the draft code (which eventually became the Nationality Act of 1940) by the House Committee on Immigration and Naturalization. Mr. Flournoy, Assistant Legal Adviser of the State Department, testified that the provision for the expatriation of naturalized citizens residing for three years in their country of origin "is the most important proposed change in the whole code" (Hearings before House Immigration and Naturalization Committee on H.R. 6127, superseded by H.R. 9980, 76th Cong., 1st Sess., p. 134); he went on to say that "[w]e in the State Department, and so far as I know those in the other Departments, think that it is a reasonable and most desirable provision" (*ibid*). He described the problem it was designed to meet as follows (*ibid.*):

> We have every day in the State Department cases of persons applying to us for passports or protection, or asking us to support claims, who have been naturalized in the United States and then have gone back and settled down in their native countries and resided there for years. We think there should be some point at which such person should lose not only his right to protection but his citizenship itself. * * * [15]

[15] Elsewhere he stated: "[A] still more serious reason why the Department of State is interested in this measure is that under the laws now existing we have thousands of persons living in

He also pointed out, "I refer not only to the naturalized citizens who have gone back to their native lands or gone to other countries—and there are many thousands of them—but to their children, born in those countries, who are alien in all of their characteristics and connections and interests, yet have the right to enter the United States as citizens" (*id.* at p. 37).[16] He explained why mere denial of protection was an insufficient remedy (*id.* at pp. 134–135):

> We consider it very undesirable that we should have persons who are not entitled to the protection of our Government and yet remain as citizens of the United States. It makes it difficult for us to extend the effect of protection to those who are really citizens and have maintained connections with the United States, to have these people retaining their citizenship.

In the debates on this provision, Chairman Dickstein of the House Committee said, in summary, that the bill would "relieve this country of the responsibility of those who reside in foreign lands and only claim citizenship when it serves their purpose" (86 Cong. Rec. 11944). Rep. Rees, sponsor of the bill, discussed the "very important provisions under which persons who have been naturalized in this country will lose their American nationality as a result of portracted residence in foreign countries"; he said that these provisions were "distinctly preferable" to

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foreign countries, usually in the foreign countries where they were born, or where their parents were born, having all their interests there, and their family connections, and yet they are citizens of the United States, and they may call on our Government for protection" (Hearings, *supra*, at pp. 36–37).

[16] See also Hearings, *supra*, at p. 137.

those of the 1907 Act, which in his view had been ineffective (86 Cong. Rec. 11948). Rep. Rees also pointed out that a naturalized citizen residing at length abroad "may marry a citizen of the foreign country in which he resides and transmit citizenship to children born therein" (86 Cong. Rec. 11949). This statement should be considered in the light of one purpose of the 1940 Act that was paramount in the minds of its sponsors: that of reducing the incidence of dual nationality to a minimum (see, *e.g.*, 86 Cong. Rec. 11944, 11948).

In the Nationality Act of 1940 as passed by Congress, the provision for expatriating naturalized citizens who reside in their country of origin for three years was incorporated, as Section 404(b), exactly as it had been proposed by the cabinet committee. 54 Stat. 1170. In addition, Congress added a provision (Section 404(c)) that a naturalized citizen "[r]esiding continuously for five years in any other foreign state" should lose his citizenship. 54 Stat. 1170.[17]

A congressional investigation of the immigration and nationality laws instituted some seven years later concluded that the "continuous residence" requirement in Sections 404(b) and (c) left the door too wide open for evasion, since persons subject to those provisions "break the continuity of their foreign residence by short trips to another foreign country, or by a short visit to the United States." S. Rep. No.

[17] It also adopted the provision for the expatriation of naturalized citizens who reside for two years in their country of origin if they thereby become citizens thereof. Section 404(a), 54 Stat. 1170. See note 14, *supra*.

1515, 81st Cong., 2d Sess., p. 767.[18] The investigating subcommittee also recommended that several additional groups of individuals be added to those excepted from the operation of Section 404. *Id.* at pp. 767–768.[18] These recommendations were adopted in the Immigration and Nationality Act of 1952, which carried over the three-year provision unchanged as Section 352(a)(1) and the five-year provision as Section 352(a)(2), 66 Stat. 269, 8 U.S.C. 1484(a)(1), (a)(2); a specific definition of "continuous residence" was adopted as part of Section 101(a)(33), 66 Stat. 166, 8 U.S.C. 1101(a)(33); and the groups excepted from the operation of Section 352 were enlarged (see pp. 3–5, *supra*). These provisions have not been amended significantly (see 73 Stat. 274, 8 U.S.C. 1485 (7)).

2. *The rationality of Congress's choice of expatriation as a remedy*

It is abundantly clear from the foregoing recitation of the diplomatic and legislative background of Section 352(a)(1) that the problem with which it deals has been a persistent one in the foreign relations of the United States and that Congress, in enacting it, "was seeking to effectuate its power to regulate foreign affairs." *Perez* v. *Brownell*, 356 U.S. 44, 57. Indeed, it is fair to say that no other expatriation provision—including the one sustained in *Perez* v. *Brownell, supra*—is supported by such extensive evi-

[18] The committee also recommended the repeal of the two-year provision referred to in notes 14 and 17, *supra*. S. Rep. No. 1515, *supra*, at p. 767. This recommendation was followed by Congress.

dence of serious diplomatic problems and sincere governmental efforts to resolve them. Since the power of Congress to employ the remedy of expatriation where reasonably necessary to solve foreign affairs problems is well settled, the question remains whether "the means—in this case, the withdrawal of citizenship—[is] reasonably related to the end—here, regulation of foreign affairs." *Perez* v. *Brownell, supra,* 356 U.S. at 58.

The "rational nexus" between the governmental problems stemming from foreign residence of naturalized citizens and the legislative withdrawal of citizenship is readily apparent from the diplomatic background of Section 352(a)(1). Experience showed that when such persons took up prolonged residence in their native lands, their former attachment was often used by the other government as a lever to extract the performance of various obligations or services. And, of course, the longer they remained, the greater were the chances of their being so implicated. Thereupon, this country would generally be called upon to intercede in one way or another; the almost invariable consequence was international friction and conflict if intercession was attempted, embarrassment if this country backed away. It may be easily supposed, too (although the diplomatic correspondence naturally does not reveal it), that the country of such a person's origin might, on the basis of his former attachment and his extended presence there, exert pressure upon him to use his American

citizenship secretly for purposes inimical to the interests of this country.[19]

In all of these situations, as in the *Perez* case, *supra*, "it is the possession of American citizenship by a person committing the act [here, protracted residence in the country of his origin] that makes the act potentially embarrassing to the American Government and pregnant with the possibility of embroiling this country in disputes with other nations" (356 U.S. at 60).[20] If the person who has chosen to reside in the country of his origin is no longer an American citizen, there will be no demands for assistance by the United States, no potentiality for bringing it in conflict with the other country or embarrassing it in the conduct of its foreign relations. There will be no attempted exploitation of his American citizenship. In short,

[19] Cf. Philippine Revised Naturalization Law, § 18(e), providing for expatriation of a naturalized citizen who "has allowed himself to be used as a dummy in violation of the Constitutional or legal provision requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege" (*Laws Concerning Nationality* (U.N. 1954), p. 385).

[20] The diplomatic background of Section 352(a)(1) demonstrates that "mere residence" by a naturalized citizen in the country of his origin is not a "neutral act," as petitioner contends (Pet. Br. 47–52), but is an act well calculated to bring embarrassment upon the United States and to embroil it with other nations. Even Judge Edgerton, dissenting in *Lapides* v. *Clark*, 176 F. 2d 619 (C.A.D.C.), certiorari denied, 338 U.S. 860 (see pp. 13–14, *supra*), recognized that "mere residence" abroad could have sufficiently significant consequences for this Nation that Congress might attach expatriation to it: "Congress may expatriate citizens on reasonable grounds. *No doubt these may include five years residence abroad*" (emphasis supplied) (176 F. 2d at 623).

"[t]he termination of citizenship terminates the problem" (*Perez* v. *Brownell, supra*, 356 U.S. at 60).

There is another connection between expatriation and the regulation of foreign relations that should be mentioned in connection with this provision. As we have noted, the Congress that passed the Nationality Act of 1940 (the statute that brought Section 352(a)(1) to its present form) was greatly concerned with problems of dual nationality and was determined to reduce them to the minimum (see p. 29, *supra*).[21] Expatriation of naturalized persons who reside at length in the country of their origin serves this end in two ways. First, many of these persons are themselves dual nationals, either because their native land never released them from allegiance[22] or because their resumption of residence there had the effect of repatriating them (by operation of domestic law[23] or by treaty[24]); their expatriation by the United States would terminate their dual nationality. Second, as the 1938 cabinet committee, the State Department's witness and the sponsor of the 1940 Act recognized,[25] it is not unlikely that persons taking up lengthy residence in countries with

[21] Cf. *Savorgnan* v. *United States*, 338 U.S. 491, 500.

[22] Natural-born citizens of some countries, such as the United Kingdom and Israel, do not lose their original nationality upon becoming naturalized as United States citizens.

[23] For example, an Italian who has lost his Italian citizenship by foreign naturalization automatically reacquires it by two years' residence in Italy (see *Laws Concerning Nationality* (U.N. 1954), p. 269).

[24] See, *e.g.*, the American naturalization treaties discussed at pp. 18–19 and note 10, *supra*.

[25] See pp. 26, 28, 29, *supra*.

which they have prior attachments will have children there; these children will normally be dual nationals,[26] and, what is more, it is extremely probable that they will develop far stronger attachments to the foreign country of their birth and residence than to the United States.

While, of course, the rationality of the connection between a problem and its solution depends, to some extent, upon what alternatives were available to Congress, this Court has pointed out (*Perez* v. *Brownell*, *supra*, 356 U.S. at 60):

> The importance and extreme delicacy of the matters here sought to be regulated demand that Congress be permitted ample scope in selecting appropriate modes for accomplishing its purpose.

Nothing emerges more clearly from the diplomatic and legislative background of Section 352(a)(1) than that Congress felt that every other reasonable mode of dealing with the problem at hand had been exhausted and that expatriation was the only practicable alternative available.

The denial of diplomatic protection or other relief had been repeatedly attempted; however, both the 1906 State Department board and the 1938 cabinet committee pronounced it unsatisfactory (see pp. 22, 25, 26, *supra*). It was considered unfair to the individual that his right to protection should be indefinite and unpredictable. Moreover, it was considered embarrassing to this country vis-a-vis other countries that

[26] This is the case with respect to petitioner's children. See pp. 5–6, *supra*.

the right of American citizens to diplomatic protection was anything less than absolute; failure of this country to give protection in some instances made it more difficult to enforce it in others. A solution by means of naturalization treaties had been attempted, but many countries had proved unwilling to enter into such agreements (see pp. 18–19, *supra*). A statutory presumption of expatriation had been attempted, but this, too, was found inadequate and difficult to administer (see pp. 24–25, 26, *supra*). It was not until all of these remedies had been tried and found wanting that Congress resorted to outright expatriation. Its judgment that this was the only feasible solution open to it was, we submit, entirely reasonable.[27]

It is argued that Congress should have selected a more restricted class for the application of this provision (Pet. Br. 39).[28] However, diplomatic history provided a fully adequate basis for the classification adopted by Congress. There was more than ample evidence that naturalized citizens taking up protracted residence in the country of their origin were the principal source of the problem of maintaining satisfactory international relations in the face of demands for protection and other relief. Certainly it is fair

[27] Not without relevance to the reasonableness of this choice is the fact that a number of other countries provide for the expatriation of naturalized (or "registered") citizens upon their extended residence in the country of their origin (Canada, Cuba, El Salvador, Guatemala (?), Liberia (presumption), Mexico, see *Laws Concerning Nationality* (U.N. 1954), pp. 76, 109, 146, 289, 308; as to Guatemala, compare p. 200 (constitutional provision) with p. 206). See also note 48, *infra*.

[28] Petitioner also argues, in effect, that Congress should have selected a *broader* class (see pp. 44; 49–50, *infra*).

to say that no narrower class was clearly suggested by that history. As in the *Perez* case, *supra*, "[t]he classification that Congress has adopted cannot be said to be inappropriate to the difficulties to be dealt with" (356 U.S. at 60).[29]

Furthermore, Congress has carefully and conscientiously narrowed the class to which the statute applies by providing numerous exceptions covering those groups who, as experience had shown, were least likely to be the cause of international problems (see pp. 3–5, *supra*). Thus, persons employed by the United States government or United States firms are excepted:[30] their open and obvious connection with this country

[29] It would seem that any narrower class (such as that suggested by petitioner, "naturalized citizens who travel to a country which does not recognize their naturalization," Pet. Br. 39) would have to depend upon the ever-changing policies and laws of other countries; it would thus make a citizen's status perilously unpredictable and would pose what has been found to be a difficult administrative problem (see S. Rep. No. 1515, 81st Cong., 2d Sess., p. 767). Moreover, such legislation might well engender antagonisms with the isolated nations to which it had application, presenting still further international complications.

The suggestion of the *amicus* (ACLU Br. 35)—that, in view of the problems it was designed to meet, Section 352(a)(1) should have been limited in application to males—is without substance. Women were by no means exempt from the various pressures (such as trial for political offenses) that gave rise to demands for protection (see pp. 16–17, *supra*; see also, *e.g.* Case of Cecilia C. Gaertner, 3 Moore, *Digest of International Law* (1906), p. 646). Moreover, even if conscription into the armed forces were the only problem that gave rise to demands for protection, there are countries that conscript women into their armed forces, and there is nothing to prevent others from doing so in the future.

[30] Section 353 (1), (4), 66 Stat. 270, 8 U.S.C. 1485 (1), (4).

will tend to discourage inconsistent demands upon them; moreover, their stays are less likely to prove permanent. Certain aged and disabled persons are excepted:[31] their disabilities greatly reduce the likelihood that demands will be made upon them; furthermore, they are less likely to have children, thus aggravating the problems Congress sought to avoid. Persons who are abroad for education or for certain emergency reasons (such as family illness) are excepted:[32] the temporary character of their sojourn reduces the chances that they will cause any international conflict. Congress was not required to make further minute distinctions; the classification it established (as further limited by the express exceptions) came as close to describing the most probable source of international complications as could reasonably be expected."[33]

Nor was Congress required to limit the application of the statute to those whose residence abroad actually causes international difficulties. As this Court pointed out in the *Perez* case, Congress must have latitude to regulate matters affecting the foreign affairs of this country "on more than an *ad hoc* basis" (356 U.S. at 59). Thus, the Court in that case did

[31] Section 353 (2), (3), (5), 66 Stat. 270, 8 U.S.C. 1485 (2), (3), (5).

[32] Section 353 (5), (6), 66 Stat. 270, 8 U.S.C. 1485 (5), (6).

[33] Petitioner's discussion of the exceptions to Section 352 (Pet. Br. 29–31), is almost entirely devoted to Section 354, which contains the exceptions to Section 352(a)(2), a provision not at issue in this case. It is Section 353 that contains the exceptions to the provision (Section 352(a)(1)) involved in this case.

not restrict Congress to providing for loss of nationality only with respect to foreign voting that in fact stirred up an international controversy. Such an approach, if applied prospectively, would call for predictions that could not possibly be made with any accuracy; if applied retrospectively, it would have the vice of dealing with the problem only after the damage had been done. An *ad hoc* approach would, moreover, pose substantial administrative difficulties and would introduce significant uncertainties into the citizen's status. Manifestly, individualized treatment is not required in relation to such a general problem as the conduct of international affairs.[24]

B. SECTION 352(a)(1) MAY ALSO BE SUSTAINED AS AN EXERCISE OF THE POWER OF CONGRESS OVER UNITED STATES CITIZENSHIP

The United States, as a sovereign Nation, has the undoubted power to regulate its own national citizenship. See *United States* v. *Wong Kim Ark*, 169 U.S. 649, 668; *Mackenzie* v. *Hare*, 239 U.S. 299, 311. Moreover, as this Court recognized in *Luria* v. *United States*, 231 U.S. 9, 22, there is an inescapable relation-

[24] Petitioner also argues that Section 352(a)(1) infringes upon the citizen's "right to travel" (Pet. Br. 13, 22, 32–33, 52–53). Plainly enough, however, the statute does not in any way affect the right or freedom of any person to travel where he will, when he will; it touches only prolonged *residence* in a single foreign country. Furthermore, whether viewed as a restriction on foreign residence or foreign travel, it is a reasonable restriction arising out of the necessities of international relations. Nothing in this Court's decision in *Kent* v. *Dulles*, 357 U.S. 116, suggests that reasonable restrictions on the right to travel are beyond the power of Congress to authorize (see 357 U.S. at 127).

ship between citizenship and the citizen's allegiance to his country:

> Citizenship is a membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other. * * *

It follows, we submit, from these premises, that it is within the power of Congress to terminate a person's American citizenship where his conduct manifests a withdrawal or transfer of his United States allegiance.[35]

This view seems to have been adopted in *Perez* v. *Brownell*, 356 U.S. 44, 60–61, where this Court observed that Congress had interpreted the conduct involved there (voting in a foreign election)

> as importing not only something less than complete and unswerving allegiance to the United States but also elements of an allegiance to another country in some measure, at least, inconsistent with American citizenship.

We do not read that statement, as does petitioner (Pet. Br. 47–52), to mean that only acts from which a withdrawal or transfer of allegiance can be inferred may be the subject of expatriation legislation.[36] As we read the Court's opinion, this fact was cited as suggesting an additional source of congressional

[35] This point has previously been discussed at somewhat greater length in our brief in *Kennedy* v. *Mendoza-Martinez*, No. 2, this Term, at pp. 47–51.

[36] Compare, for example, *Mackenzie* v. *Hare*, *supra*, where the act in question was marriage to a foreigner.

power—the power to regulate citizenship (and with it, the authority to deal with serious compromises of allegiance)—in support of the legislation at issue there. However that may be, we believe that the conduct at issue here (prolonged residence by a naturalized citizen in the country of his origin) has the same elements adverted to by the Court in the *Perez* case.

Congress long ago committed this Nation to the policy that, when a person assumes allegiance to the United States by naturalization, he should thereafter maintain his permanent residence in this country. Thus, he is required in applying for naturalization to establish his intention to reside in the United States permanently. 34 Stat. 597 (1906); see 66 Stat. 259, 8 U.S.C. 1449. And, as we have noted,[37] permanent residence by a naturalized citizen in a foreign country within five years of naturalization is *prima facie* a ground for denaturalization. 34 Stat. 597, now 66 Stat. 260, 8 U.S.C. 1451(d).

It is perfectly clear that both the 1938 cabinet committee on which Congress relied and Congress itself regarded protracted residence by a naturalized citizen in the country of his birth or former nationality as importing a serious compromise of his allegiance. The cabinet committee, for example, observed that such residence "has rendered it difficult to make fully effective the principle, which this Government has long sought to maintain, that naturalization involves a complete change of national character and termination of prior allegiance." Nationality Laws

[37] See p. 21, *supra*.

of the United States, 1938, part I, House Committee Print, 76th Cong., 1st Sess., p. 71. The committee went on to explain (*ibid.*):

> Needless to say, naturalized citizens who resume residence in the foreign lands from which they came are apt to renew old associations and ways of living and thinking, and thus become merged in the native population, losing, to a great degree, if not completely, their American character and feeling. This makes it all the more desirable that their American nationality, and not merely their right to the diplomatic protection of this Government, should be terminated."[38] * * *

In its letter of transmittal to the President, the committee explained that a basic purpose of all of the proposed expatriation provisions was "to deprive persons of American nationality when such persons, by their own acts, or inaction, show that their real attachment is to the foreign country and not to the United States" (Nationality Laws of the United States, part I, *supra*, at p. vii). It also stated, after observing that naturalization is conditioned on an intention to reside in this country permanently, that (*ibid.*)

> When a naturalized citizen abandons his residence in the United States and takes up residence in the state of which he was formerly a national, definite termination of his American citizenship should follow.

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[38] See also testimony of Mr. Flournoy, quoted at pp. 27–28, note 15, *supra*.

The Senate report on the bill that became the Nationality Act of 1940 had this to say (S. Rep. No. 2450, 76th Cong., 3d Sess., p. 4):

> These provisions for loss of nationality by residence abroad would greatly lessen the task of the United States in protecting through the Department of State nominal citizens of this country who are abroad but whose real interests, as shown by the conditions of their foreign stay, are not in this country. * * *

During the debates Chairman Dickstein emphasized the purpose of the bill to terminate the citizenship of "those who reside in foreign lands and only claim citizenship when it serves their purpose" (86 Cong. Rec. 11944), and the bill's sponsor, Rep. Rees, observed that a naturalized person residing in his native land "is not likely to have any real attachment to the principles of the Constitution of the United States" (86 Cong. Rec. 11948). In all of these statements, those responsible for the development and passage of the provision at issue here were expressing their considered view that a naturalized citizen's returning to reside permanently in the country of his origin shows not only a lack of allegiance to this country but the reestablishment of a relationship with another country that is inconsistent with American citizenship.

This view, we submit, was "not irrationally" entertained (see *Perez* v. *Brownell, supra,* 356 U.S. at 61). A leading authority on the foreign affairs of the United States has stated (Borchard, *Diplomatic Protection of Citizens Abroad* (1915), p. 701):

> The tie which binds the naturalized citizen to his adopted country has always been recognized as more easily dissoluble than that which binds the native citizen to his country. * * *

When the naturalized citizen resumes permanent residence in the country of his origin, the pressures and temptations to revert to his old allegiance will be strong, indeed. He will often be surrounded by family and old friends whose only tie is with the native land.[39] Frequently he will marry a native, and his children will be born and raised there with no real connection to his adopted country. He will generally resume such habits of living as the language and customs of the native land.[40] He will normally be dependent for his livelihood on the economy of the country in which he resides.

Surely it was reasonable for Congress to conclude that the native's reversion to a supposedly abandoned way of life would put such a strain on his American allegiance that it could not normally be expected to survive. By the same token, Congress was warranted

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[39] Secretary of State Fish observed in 1873 (Fish to Grant, Aug. 25, 1873, 2 For. Rel. 1873, p. 1190) that

> while the principle on which rests the right of protection while in foreign countries of the naturalized is the same with that of the native-born citizen, there is an appreciation of the strong proclivity to resume his original citizenship on the part of him who, having wandered from home, returns to find the attractions of early associations and of family ties enticing him * * *.

[40] A recent writer has made note of "the fact that nationals living abroad tend to dissociate themselves from the national life of their State and are likely to lose the characteristics normally expected of a national" (Bar-Yaacov, *Dual Nationality* (1961), p. 261).

in concluding that his allegiance to his native land might be significantly revived. Accordingly, we submit, it was a reasonable exercise of the congressional power to regulate citizenship and to deal with serious compromises of allegiance for Congress to make protracted residence in the land of his origin an expatriating act for the naturalized citizen.

II. CONGRESS DID NOT UNJUSTIFIABLY DISCRIMINATE IN MAKING AN EXPATRIATING ACT APPLICABLE ONLY TO NATURALIZED CITIZENS

Petitioner contends that Section 352(a)(1) violates the due process clause of the Fifth Amendment[41] because it discriminates "invidiously" as between natural-born and naturalized citizens of the United States. Of course, there is nothing in the Constitution expressly prohibiting differentiations between these two classes of citizens. Indeed, the Constitution draws several such distinctions itself. Thus, only a natural-born citizen may become President. Art. II, Sec. 1. A naturalized citizen must wait at least seven years after he obtains his citizenship before he is eligible to sit in the House of Representatives, Art. I, Sec. 2, and he must wait at least nine years before he can sit in the Senate. Art. I, Sec. 3.

[41] She does not seem to place substantial reliance on the first sentence of the Fourteenth Amendment (see Pet. Br. 3, 12 *et seq.*; she adverts to it only briefly at Pet. Br. 25). As this Court stated in *Perez* v. *Brownell*, 356 U.S. 44, 58, n. 3, "there is nothing in the terms, the context, the history or the manifest purpose of the Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship."

The test under the Fifth Amendment is whether the classification in question has a foundation in reason. As the Court pointed out in *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (cited at Pet. Br. 21–22), "discrimination may be *so unjustifiable* as to be violative of due process" (emphasis supplied). But, as the quotation implies, not all differentiations are banned. This Court has many times upheld distinctions that would be at least as odious as that between natural-born and naturalized citizens, had they not a basis in reason. See, *e.g.*, *Hirabayashi* v. *United States*, 320 U.S. 81, 100 (ancestry); *Mackenzie* v. *Hare*, 239 U.S. 299 (sex). See also *Terrace* v. *Thompson*, 263 U.S. 197; *Heim* v. *McCall*, 239 U.S. 175; *Porterfield* v. *Webb*, 263 U.S. 225; *Clarke* v. *Deckebach*, 274 U.S. 392. In each of these cases, the Court sustained differentiations of treatment as among different classes of persons upon a showing that the classification was reasonably devised to meet a demonstrated need.

Indeed, this Court has itself recognized the validity of distinctions between different classes of citizens on the basis of foreign residence. Thus, the Court in *Perkins* v. *Elg*, 307 U.S. 325, 329–30, noted with apparent approval that a child born in this country of alien parents who subsequently returned to the country of their origin would lose his natural-born American citizenship if he did not (1) make an election upon reaching majority, and (2) return to the United States to assume the duties of citizenship; on the other hand, of course, a natural-born child of citizen parents could be taken abroad shortly after birth and would never have to take these affirmative

steps in order to retain his American citizenship. The citizenship laws of this country contain a number of such differentiations as between classes of natural-born citizens, none of which seems open to serious question. Thus, a foreign-born child of one citizen parent and one alien parent, though a natural-born citizen of this country, loses that citizenship if he fails to come to the United States prior to the age of twenty-three to live for a least five continuous years;[42] foreign-born citizens of two citizen parents have no such affirmative obligation. A natural-born citizen of dual nationality loses his citizenship if he resides for three years in the country of his other nationality after the age of twenty-one unless, prior to the expiration of the three-year period, he takes an oath of allegiance before an American diplomatic or consular official;[43] no such disability attaches to natural-born citizens who do not happen to have another nationality.

The drawing of lines between natural-born and naturalized citizens in connection with foreign residence has a basis in well over 100 years of history in this

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[42] 66 Stat. 235, 8 U.S.C. 1401 (a)(7), (b). To qualify under this provision the citizen parent must have resided in the United States for ten years, five of which were after the age of fourteen. Petitioner Schneider's children are governed by this provision (see p. 6, *supra*).

[43] 66 Stat. 269, 8 U.S.C. 1482. To become subject to this provision the dual national must also have "voluntarily sought or claimed benefits of the nationality of any foreign state." Presumably, petitioner Schneider's children could be subject to this provision (see pp. 5–6, *supra*).

There are, of course, other provisions relating to loss of nationality that apply only to dual nationals. See 66 Stat. 267, 8 U.S.C. 1481 (a)(4)(A), (b).

country's diplomatic practice (see pp. 17–20, *supra*). As a general rule, only naturalized citizens were administratively denied rights of citizenship solely on grounds of residence abroad (*e.g.*, Wheaton to Knoche, July 24, 1840; Fish to Mintz, Feb. 1, 1870, both cited at p. 17, *supra*), and, where other grounds were also involved, different standards were applied to naturalized citizens than to the natural-born (see p. 19 and note 11; *supra*). For nearly 100 years, our naturalization treaties have provided for expatriation of naturalized citizens alone upon the basis of foreign residence (see pp. 18–19, *supra*). Legislation dealing with these matters on the basis of a distinction between naturalized and natural-born citizens was first enacted over half a century ago (see pp. 22–23, *supra*).

It is also noteworthy that a great many other countries draw sharp distinctions in their nationality laws between natural-born and naturalized citizens. The reason for these distinctions was recently set forth by the delegate of the United Kingdom to an international Conference on the Elimination or Reduction of Future Statelessness: "

> The natural-born person had a birth right to his nationality: but the naturalized person was expected to justify his acquisition of nationality by a higher standard of behaviour and States should have greater freedom to deprive him of his nationality.

It is not surprising, then, that the United Kingdom is notable among the nations that have grounds for

" Summary Record of the 15th Meeting of the Committee of the Whole, U.N. Conference on the Elimination or Reduction of Future Statelessness (U.N. 1961), p. 10.

expatriating naturalized citizens that are not applicable to natural-born citizens (*Laws Concerning Nationality* (U.N. 1954), pp. 475–476)."[45] Other nations drawing a similar line[46] are Argentina, Australia, Brazil, Canada, Ceylon, Costa Rica, Cuba, Ecuador, El Salvador, France, Guatemala, Honduras, Israel, Jordan, Lebanon, Liberia, Luxembourg, Mexico, New Zealand, Nicaragua, Pakistan, Paraguay, Peru, Philippines, South Africa, Southern Rhodesia, Thailand, and Turkey."[47] In most instances, foreign residence is among the grounds applicable only to naturalized citizens."[48]

The lack of arbitrariness in Congress's making the act of expatriation involved here—protracted resi-

[45] Indeed, in Great Britain, only naturalized and "registered" citizens can be expatriated.

[46] Sometimes applicable to other categories of non-natural-born citizens such as "registered" citizens.

[47] *Laws Concerning Nationality*, *supra*, at pp. 19–20, 57, 76, 86–87, 103, 104, 109, 135, 144, 146, 165, 206, 218, 265–266, 280, 287, 289, 304, 308, 346, 352, 364, 376, 377, 385, 410–411, 427–428, 457, 461, 475–476; *id.* (Jan. 1955 Supp.) at p. 3 (Argentina). In some instances, the provision is expressed in terms of the revocation or cancellation of naturalization, but they are more analogous to expatriation than to denaturalization as we know it, since they are unlimited in point of time and do not relate in any way to the acquisition of citizenship.

[48] These provisions are, of course, variously qualified; for example, in some instances, the requisite period may be tolled by the filing of a declaration; in a few, foreign residence creates a rebuttable presumption. As we have noted (see note 27, *supra*), the laws of a number of these countries specify residence by a naturalized citizen in the country of his origin as an expatriating act.

A very few countries make residence abroad an expatriating act for any citizen. *E.g.*, France (residence in foreign country where ancestors have lived for 50 years); Pakistan, Yugoslavia (*Laws Concerning Nationality*, *supra*, at pp. 164, 364–365, 557).

dence in country of origin—applicable only to naturalized citizens is readily apparent from the diplomatic background of Section 352(a)(1) (see pp. 16–30, *supra*). Long and sometimes bitter experience had demonstrated that such conduct was "potentially embarrassing to the American Government and pregnant with the possibility of embroiling this country in disputes with other nations,"[49] and that it was so *because* the individual had an intimate prior connection with the country of residence: birth there or former nationality or both. Thus, it was the fact that the individual *was a naturalized citizen*—and hence, by hypothesis, was born in another country and had possessed (indeed, perhaps still possessed) the nationality of that country—that made his residence in the country of his origin a likely source of international conflict.[50]

Having determined that the problem of protracted residence by naturalized citizens in the country of their origin required legislative resolution, was Congress required to legislate with respect to a larger group? Was Congress, in the name of "equality" or of what Mr. Justice Holmes referred to as "abstract

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[49] *Perez* v. *Brownell*, *supra*, 356 U.S. at 60.

[50] There were other circumstances indicating that naturalized citizens were a particularly fruitful source of foreign relations problems—the fact, for example, that as a class they travel abroad far more than native citizens. This fact was noted by the State Department Citizenship Board in 1906 (see p. 22, *supra*) and is amply demonstrated by current figures. In 1960, 1 in every 47 naturalized citizens received a passport, while only 1 in every 237 native citizens did so; considered another way, while naturalized citizens made up only 3.7 percent of the population, they received 16.7 percent of the passports issued (figures supplied by Department of State).

symmetry" (*Patsone* v. *Pennsylvania*, 232 U.S. 138, 144), required to say that *no* citizen—natural-born or naturalized—could reside abroad for more than a given period without expatriating himself![51] Plainly not, in view of the fact that experience had shown what is obvious: that the problem of *naturalized* citizens residing in the country *of their origin* has far greater potential for causing international problems than foreign residence by citizens under other circumstances. Congress may legislate with respect to one problem at a time; it "may hit at a particular danger where it is seen, without providing for others which are not so evident or so urgent." *Hirabayashi* v. *United States, supra,* 320 U.S. at 100; *United States* v. *Petrillo,* 332 U.S. 1, 8–9; *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 489; *Patsone* v. *Pennsylvania, supra.*

In this connection, we point out that Congress, in dealing with other problems of foreign residence, *has* recognized that not all are of the same degree of seriousness. Thus, residence by a naturalized citizen in a country other than the one of his origin is somewhat less likely to cause the kind of problem with which Congress was most concerned; therefore, the period of residence before expatriation takes place is five years instead of three, and the exceptions to this five-year provision are much broader than those applicable

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[51] As we have noted, a very few countries provide for the expatriation of both natural-born and naturalized citizens for foreign residence (see note 48, *supra;* cf. note 53, *infra*).

to the three-year provision involved in this case.[52] Similarly, certain classes of foreign-born persons who are citizens at birth are considered to be a sufficiently potential source of difficulties (albeit less so than naturalized citizens) that they are subject to certain disabilities and requirements in relation to residence abroad (see p. 46, *supra*).[53] Plainly, Congress may thus legislate in proportion to the problem perceived; it may attach grave consequences to what it considers to be the most serious and troublesome conduct and lesser consequences to conduct not deemed to be of equal danger. *E.g., Hirabayashi* v. *United States, supra; Williamson* v. *Lee Optical of Oklahoma, Inc., supra.* Indeed, it would be irrational for Congress to act otherwise.

There is nothing "invidious" about the distinction Congress made when it enacted Section 352(a)(1) (see Pet. Br. 27–31), nor does that distinction brand naturalized citizens as an "inferior group of citizens" (Pet. Br. 27). It simply recognizes, on the basis of experience and history, that naturalized citizens—through no real fault of their own—are very likely

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[52] Sections 352(a)(2), 354, 66 Stat. 269, 271, 8 U.S.C. 1484 (a)(2), 1486. Illustrative is the fact that petitioner would have been free to reside permanently in a country other than Germany (the country of her origin) because she qualifies under one of these broader exceptions (see Pet. Br. 13–14, n. 2).

[53] A small handful of countries provide for the expatriation of *foreign-born* citizens (whether natural-born or naturalized) on the basis of protracted foreign residence. *E.g.*, Netherlands (time tolled by notice of intention to remain Netherlander), Norway (applies to one who never resided in Norway), Sweden (applies to one who never lived in Sweden under circumstances indicating a connection) (*Laws Concerning Nationality, supra*, at pp. 324, 354, 441).

to create international problems when they reside at length in the country of their origin, and that they are far more likely to do so than other citizens residing abroad. Congress, seeking in good faith to avoid such problems, perforce had to focus on the group whose conduct gives rise to them, but it did not do so "invidiously." In effect, it called upon all naturalized citizens either to cooperate with this, their adopted country, by not putting themselves in a position where they are likely to bring it in conflict with other Nations, or to accept the only alternative calculated to resolve any difficulties that might attend their refusal thus to cooperate: termination of their citizenship. That they must make this choice is no reflection on their "loyalty" or "reliability" (see Pet. Br. 27); it is dictated by the hard facts of experience in the foreign relations of this country.

It is relevant, too, in considering the reasonableness of the classification adopted in Section 352(a)(1), that, generally speaking, its effects are far less severe as applied to naturalized citizens than they would be as applied to natural-born citizens. In many instances, the naturalized citizen will also be a citizen of the country of his origin, so that he will not be rendered stateless; in most other instances (as in this case), his peculiar connection with that country will make it easier for him to obtain its citizenship.[44] In any event, the fact of his birth or former citizenship (or both) there will ordinarily mean that he

[44] Thus, as we have noted (and as petitioner concedes), petitioner could easily obtain German citizenship because of her husband's German nationality. See p. 6, *supra*; see also Pet. Br. 38, n. 15.

has family connections and old friends there, speaks the language, understands the customs—in short, that he will find it relatively easy to become reassimilated into the population from which he originally sprang and to which he has chosen to return. By contrast, the natural-born American citizen would usually have few if any of these special associations other than those he might have accumulated during the period of residence prescribed in the statute. He would be in a markedly more difficult position to pick up the threads of a normal existence in a new country.

In sum, it was not an unreasonable discrimination for Congress to make Section 352(a)(1) applicable only to naturalized citizens. As we have shown, the reasonableness of this classification is incontrovertibly established by a long diplomatic history during which serious international problems arose out of the residence of such individuals in the country of their origin—problems substantially more serious than any stemming from the foreign residence of other citizens. Moreover, there is ample precedent, in the diplomatic and legislative practice of this and other countries and, indeed, in the decisions of this Court, for the establishment of such a classification. It was on the basis of this Court's decision in *Mackenzie* v. *Hare*, *supra*, that the court below, in *Lapides* v. *Clark*, 176 F. 2d 619, 621 (C.A.D.C.), certoriari denied, 338 U.S. 860, found the very classification involved in this case [55] to be reasonable:

[55] That case was concerned, of course, with the five-year provision for residence by a naturalized citizen in any foreign country, rather than the three-year provision at issue here; the principles announced there, however, are no less applicable here. See pp. 13-14, *supra*.

> The distinction [drawn in the *Mackenzie* case] between female citizens marrying Americans and those marrying foreigners was held not to be an arbitrary exercise of power, as it was dictated by a policy to avoid embarrassments and controversies with foreign governments. *In view of this decision, supporting classification as between native born citizens, we cannot doubt that for a similar purpose Congress has the power to distinguish between native born and naturalized citizens* * * *. [Emphasis supplied.].

For the reasons we have set forth, we submit that this carefully considered conclusion is unassailable.

III. SECTION 352(a)(1) IS NOT PENAL

Petitioner's contention (Pet. Br. 53–56) that Section 352(a)(1) imposes punishment (and that, in turn, such punishment is cruel and unusual in violation of the Eighth Amendment) is so far wide of the mark as to require but little comment.[56] This statute, providing that naturalized citizens shall lose their citizenship upon three years' residence in the foreign country of their origin, is no more "penal" than Section 349(a)(5),[57] which attaches expatriation to voting in a foreign election. The direct predecessor of that provision was sustained as a valid exercise of Congress's foreign affairs power in *Perez* v. *Brownell*, 356 U.S. 44, and not even the dissenting Justices sug-

[56] The *amicus* does not make this argument.

[57] 66 Stat. 267, 8 U.S.C. 1481(a)(5).

gested that the provision could be considered as in any sense penal. The same is plainly true here.[58]

While petitioner quotes the opinion of the Chief Justice in *Trop* v. *Dulles*, 356 U.S. 86, 96, to the effect that "[t]he controlling nature of such statutes normally depends on the evident purpose of the legislature," she does not point to a single word in the legislative history that would suggest a penal purpose behind the enactment of Section 352(a)(1) by Congress. Nor could she have done so, for the whole background of the provision—diplomatic and legislative—makes unmistakably clear that the dominant purpose of the State Department in seeking this legislation and of Congress in enacting it was to regulate the foreign affairs of the United States (see pp. 16–30, *supra*). Not so much as a hint of penal intent crept into the deliberations on this provision or any of its antecedents.

Petitioner appears to make three arguments in support of her "punishment" point: first, that the statute is penal on its face because it is obviously intended to deter (Pet. Br. 54); second, that the exceptions to the statute demonstrate its penal character because they have no valid regulatory purpose (Pet. Br. 54–55); and, third, that the statute is penal because the act to which it attaches expatriation cannot be considered as a "voluntary" divestiture of citizenship (Pet. Br. 55–56). Each of these arguments is manifestly unsound.

[58] The standards for determining whether expatriation legislation imposes punishment are discussed at some length in our brief in *Kennedy* v. *Mendoza-Martinez*, No. 2, this Term, at pp. 53–59. Petitioner does not seem to dispute the conclusions there drawn.

Presumably any statute that attaches undesirable consequences to a certain form of conduct will have the incidental effect of deterring individuals from engaging in that conduct. That fact, however, does not make the statute "penal" for any legally relevant purpose where there is a valid non-penal design behind it. See *e.g., Helvering* v. *Mitchell,* 303 U.S. 391, 399–401; *United States ex rel. Marcus* v. *Hess,* 317 U.S. 537, 554–555; *Rex Trailer Co.* v. *United States,* 350 U.S. 148. As we have pointed out, if not the face of the statute, then unquestionably its legislative history makes it plain that citizenship is withdrawn under the conditions stated in Section 352(a)(1) because its retention, under those conditions, is a source of potential embarrassment in the conduct of foreign relations.

Contrary to petitioner's second contention, the legitimate congressional purpose behind the exceptions to Section 352(a)(1) (which are contained in Section 353[39]) is apparent from their face. Their enactment constituted a good-faith effort on the part of Congress to confine the application of Section 352(a)(1) by excepting from it those groups who, by virtue of age, employment, physical condition or other similar circumstance, were least likely to cause the international problems to which the statute was directed (see pp. 36–37, *supra*). These exceptions thus underline, rather than detract from, the manifest purpose of Section 352(a)(1) to accomplish a valid regulation of the foreign affairs of the United States.

[39] 66 Stat. 270, 8 U.S.C. 1485.

It is not clear how petitioner's third argument—that Section 352(a)(1) imposes consequences which petitioner "did not invite or seek by any voluntary act" (Pet. Br. 56)—is thought to produce a conclusion that the statute is "penal" in character. In any event, however, as we have pointed out (see pp. 14–15, *supra*), petitioner's decision to remain in the country of her origin for more than three years was a purely voluntary act on her part: that she did not "intend" *i.e.*, desire, that act to result in the loss of her citizenship is, of course, irrelevant. Congress having validly declared that one who voluntarily engages in such conduct is considered as having expatriated himself, petitioner did indeed "invite" that consequence when she willingly chose to remain permanently in the land of her birth.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted.

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